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SUBJECT: Leading Frankfurt Prosecutor says Germany has a Long Way to Go in Anti-Corruption efforts

1. (SBU) SUMMARY: Frankfurt prosecutor Wolfgang Schaupensteiner -- Germany's leading expert on corruption -- says Germany needs stricter anti-corruption laws and a public awareness campaign to help overcome complacency. Authorities in Germany have fewer and less effective tools to fight corruption (particularly corporate misconduct) than their counterparts in the U.S.; Germany needs U.S.-style measures to deal with corporate crimes coupled with enhanced internal controls within large companies. A handful of German states maintain procurement blacklists of corrupt private companies; Schaupensteiner stressed the need for an EU-wide blacklist of companies convicted of bribery in any jurisdiction. The city of Frankfurt was the first to establish an anti-corruption task force. On two of Germany's largest international bribery cases -- involving Frankfurt Airport Authority (Fraport) participation in the Tashkent and Manila airport projects -- he said that prosecutors face uphill battles in collecting evidence abroad and in forcing full disclosure by Fraport. END SUMMARY.

2. (U) Corruption is more widespread in Germany than most Germans believe, according to Wolfgang Schaupensteiner, the head of the Anti-Corruption Department at the Frankfurt prosecutor's office. Schaupensteiner, whom media deem Germany's leading expert on corruption, told consulate representatives that prosecutors are hampered by scarce resources and weak enforcement tools. Thirty-five of the hundred prosecutors in Frankfurt handle commercial crimes, but only four of those focus on corruption. The office has no internet connection and as of December 2003, had a backlog of 574 cases. This huge load of pending cases means the statute of limitations (typically five years / extendable to ten years) may expire in some cases. Schaupensteiner noted that Frankfurt prosecutors must divide their time between complex commercial bribery cases and local corruption cases. Frankfurt -- although no more corrupt than other cities in Germany -- has a higher profile on the issue as the first German city to institute an anti-corruption unit in 1989 (it currently has three full-time staff dealing with corruption).

3. (U) Schaupensteiner praised U.S. law on corporate crimes and characterized the German legal framework as inadequate to prosecute corporate crimes. Unlike in the U.S., German prosecutors cannot indict companies (only individuals). In contrast to the U.S. Securities and Exchange Commission (SEC), German stock market authorities have no mechanism to punish criminal misconduct by companies listed on German exchanges. Schaupensteiner said the German government and the EU should create blacklists (Korruptionskataster) of companies involved in corruption at any level. Six German states (including Hesse) have such blacklists, but a government bill which passed the Bundestag in 2002 failed in the conservative-dominated Bundesrat.

4. (SBU) On high-profile international bribery cases, Schaupensteiner said that evidence points to Fraport misconduct in connection with airport construction projects in Tashkent and Manila, but that prosecutors face enormous procedural hurdles. Unlike in the U.S., Schaupensteiner cannot force Fraport to disclose all of its files on the deals (it can only search for such files and ask specific questions). He noted that in similar U.S. cases (Enron / Arthur Andersen), the failure to disclose records is itself a criminal offense. Since Germany and the Philippines have no bilateral legal assistance treaty, German prosecutors face an additional hurdle in collecting evidence from the Philippine side. Until Germany adopts legal reforms, prosecutors will face an uphill battle in such cases. Meanwhile, Schaupensteiner hopes political pressure will force large companies to improve internal controls. For instance, Deutsche Bahn instituted an anti-corruption ombudsman in 2000 (after a corruption scandal in eastern Germany) which has investigated dozens of allegations, saving the company an estimated ten million euros to date. Companies themselves stand to benefit from avoiding misconduct and litigation: Fraport, for instance, lost 350 million euros on the abandoned Manila Airport project (not including legal costs).

15. (U) COMMENT: In media appearances, Schaupensteiner points out that Germans condemn corruption in public life but assume incorrectly that their country is relatively free of the phenomenon. Many Germans also accept "insider influence" as a normal part of doing business. From a prosecutor's viewpoint, he believes simply outlawing corruption is not enough: without effective legal procedures and sanctions against corporate misconduct, the state is more likely to spend its resources going after small fry and punish "petty" corruption while allowing the big fish -- in corporate and international commercial bribery cases -- to get away. Germans appear to have little sense of urgency on the issue: with a lack of legislative initiative for effective sanctions at the federal and state level -- and unwillingness to publicize an embarrassing phenomenon -- fighting corruption remains an idea whose time has not quite arrived. END COMMENT.

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